

January 12, 2007

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: Comment on Appeal and Request for Waiver of a Decision of the
Universal

Service Administrator by Cristo Rey New York High School,
CC Docket No. 02-6

Billed Entity Name	Cristo Rey New York High School
Billed Entity Number	16024678
Funding Year	2005
471 Application Number	468832
Funding Request Numbers	1290466, 129048, and 1290562

Comment

On November 27, 2006, the FCC received an Appeal and Request for Waiver filed by Linda Schreckinger Sadler, Attorney at Law, on behalf of Cristo Rey New York High School ("Cristo Rey"). This appeal and waiver request was just recently posted on the FCC Web site. In its request, Cristo Rey seeks a review of a USAC decision denying for funding for the above-referenced FRNs. As an alternative, Cristo Rey "...seeks a waiver of the FCC's E-rate program rules regarding the 'two signatures-two dates' rule for contract requirements." As the New York State E-rate Coordinator, E-Rate Central wishes to support Cristo Rey's request for relief from USAC's "two signatures-two dates" contract denial.

More importantly, E-Rate Central wishes to encourage the Commission to clarify that a contract requirement for two signatures and two dates is not an FCC rule. In doing so, the FCC may be able to resolve and approve a number of other appeals that it has been receiving on this same issue.¹

¹ See, for example:

- Request for review by Campbell City Schools dated November 2, 2006.
- Request for review by Weatherly Area School District dated November 6, 2006.

USAC has long struggled with, and provided different advice regarding, specific contract signing requirements. Early interpretations that contracts must be signed by both parties was at one time modified by FCC staff guidance that a certain type of contract — a so called “Best Buy” contract² — might only require the applicant’s signature. In September 2003, in its Train the Trainer workshop, USAC indicated only that “Applicants must provide signed and dated contracts for reviews and audits.”³ This guidance did not explicitly state that both the applicants and the service providers must sign and date the contracts.

By September 2004, in its next Train the Trainer workshop, USAC indicated that “The FCC Fifth Report and Order requires both the applicant and service provider to sign the contract prior to the filing of a Form 471.”⁴ In this case, no mention was made of a requirement that both parties date the contract.

Only more recently⁵ has USAC begun insisting that a contract be both signed and dated by both parties, and begun denying funding requests when contracts did not include two signatures and two dates. The stated justification for this requirement is the Fifth Report and Order (FCC 04-190), specifically Paragraph 48 in the Record Retention section that includes language stating that “Both beneficiaries and service providers must retain executed contracts, signed and dated by both parties.”

E-Rate Central believes that USAC’s interpretation of Paragraph 48 is overreaching. In particular, we note the following:

1. Paragraph 48 clearly states that the list of documents that must be retained is provided “for illustrative purposes.” It does not purport to be a list of documents that must be created in the express form noted.
2. Nowhere in the Fifth Order and Report or in previous E-rate Orders has the FCC ever proposed, asked for comments on, or explicitly decided that a contract must include signatures and dates by both parties to be valid for E-rate purposes. At most, the FCC has properly expressed reliance on state contract requirements.

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- Request for review by Andes Central School District dated December 15, 2006.
 - Request for review by Olympic Peninsula Consultants dated December 18, 2006.
 - Request for review by Havana School District 126 dated December 18, 2006.

² By which was meant a commercially-standard, company-provided agreement requiring only a customer’s concurring signature and date.

³ “Service Provider Issues” presentation, slide #13.

⁴ “E-rate from the Service Provider Perspective” presentation, slide #12.

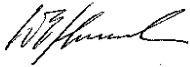
⁵ For a more complete history of USAC’s position on this issue, see the Reply Comments (“Dual Contract Signatures” at p. 6) filed by the Pennsylvania Department of Education on December 19, 2005, available at <http://www.e-ratepa.org/Docs/PA%20NPRM%20Reply%20comments%202005%20final.pdf>.

3. In a decision released June 13, 2006 (*Order re. Richmond County School District*, DA 06-1265), the FCC granted three appeals involving issues of contract validity, one of which specifically dealt with a contract deemed invalid by USAC because "...it does not include dates accompanying the signatures." This appeal was granted "on the merits," not on a waiver of FCC rules.

Despite the precedent-setting nature of the *Richmond County* decision, USAC continues to insist that Paragraph 48 requires contracts to have two signatures and two dates, and to deny funding when they do not.⁶

If, as we believe it should, the Commission grants the Cristo Rey appeal (and/or any of the other similar "two signatures-two dates" appeals noted in footnote #1), we encourage the Commission to clearly affirm that Paragraph 48 pertains only to the FCC's record retention rules. Unless otherwise required by FCC rules, the list of documents, and the specific form of those documents, included in Paragraph 48 are "for illustrative purposes" only.

Sincerely,



Winston E. Himsworth
In support of Cristo Rey New York High School

⁶ Two signatures-two dates is not the only "requirement" inferred by USAC based on the illustrative Para. 48 record retention list. Another example is USAC's recent insistence that, if a consultant is used, the applicant must have, not merely retain a copy if it does have, a written agreement with the consultant. The FCC requirement(s) with regard to consultants, of course, are still an open issue yet to be decided as a result of the FCC's Third Report and Order and Second Further Notice of Proposed Rulemaking (Para. 91) released December 23, 2003.